

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



MARK L. SHURTLEFF
ATTORNEY GENERAL

JOHN E. SWALLOW
Chief Deputy

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February 3, 2012

KIRK TORGENSEN
Chief Deputy

RECEIVED
FEB 03 2012
DIV. OF OIL, GAS & MINING

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S0530071
S0530076

Milton R. Gurney
Resolution and Receivership Specialist
Federal Deposit Insurance Corporation as Receiver of SunFirst Bank
1601 Bryan Street
Dallas, Texas 75201

Re: Letters of Credit 154000772, 154000798, 154000806, and 154000780; Color Country Rock; Snow White, Windy 3 and Vermillion Mines; S/053/0065, S/053/0071, and S/053/0076; Washington County, Utah

Dear Mr. Gurney:

The Utah Division of Oil, Gas and Mining (Division) has referred your letter dated January 17, 2012, concerning the referenced irrevocable letters of credit (LOCs) issued by SunFirst Bank to me for further action. These letters of credit were provided to the Division and the U. S. Department of the Interior, Bureau of Land Management (BLM), to ensure reclamation of mine sites as required under the Utah Mined Land Reclamation Act, the Federal Land Management Policy Act (FLPMA), and other federal laws. These mine sites are being operated under permits held by Color Country Rock LLC.

The mine operator is required to provide a surety as a condition for obtaining approval to commence mining. It is possible these letters of credit may have been collateralized with accounts at SunFirst Bank provided by Color Country Rock or its principals. To the extent that the letters of credit were collateralized with guaranteed accounts at SunFirst, the Division and the BLM assert their claims to the guaranteed funds in these accounts, both as party with a prior claim, and as third party beneficiary of the SunFirst collateral agreement and as a beneficiary of the FDIC guaranty. In addition, if there are other assets held by SunFirst including deeds of trust or titles the State of Utah asserts a beneficial trust interest in those assets. In order to determine the nature of these claims, we request copies of all correspondence and agreements between SunFirst Bank and the persons or entities that contracted with SunFirst to provide the LOCs.

In addition, the LOCs provided by the bank are an irrevocable guaranty to the State of Utah and the BLM that the reclamation work required by federal and state law will be completed. The FDIC guaranty of the bank and its accounts is considered an integral part of the LOC assurance. The surety is required under state and federal police powers to protect and preserve the public health and safety and as such cannot be voided by bankruptcy nor evaded by the FDIC as part of the bank closure. The State of Utah will expect the FDIC to honor the obligations represented by the Letters of Credit. Your response in the affirmative is required.

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To the extent that a Proof of Claim may be required to document the basis and priority of these claims, we request an immediate response. Telephone calls to the number and persons as advised in the letter have not been returned.

Please contact me at the address above or Paul Baker by telephone at (801-538-5348) or by e mail (paulbaker@utah.gov). You may also contact the Division's bonding coordinator, Penny Berry, at 801-538-5291 or bondcoordinator@utah.gov.

Thank you for your assistance.

Sincerely,



Steven F. Alder
Assistant Attorney General

SFA:pbb
Enclosure: Copies of LOCs
Cc: Opie Abeyta and Terry Snyder, BLM State Office
Russ Schreiner, BLM St. George Office
Paul Baker, Minerals Program manager
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